IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 23226 of 1995

Between:

1. K.Janardhan Rao S/o.Raghavaiah
   R/o. Ibrahimbagh Village, Hyderabad.
2 K.Krishna Mohan Rao S/o.K.Janardhan Rao
   R/o.Ibrahimbagh Village , Hyderabad.
3 K.V.Ram Mohan Rao S/o. K.Janardhan Rao
   R/o.Ibrahimbagh Village , Hyderabad.
4 K.Vishnu Mohan Rao S/o.K.Janardhan Rao
   R/o.Ibrahimbagh Village, Hyderabad.

..... PETITIONERS

AND

1 The Commissioner of Land Reforms & Urban Land Ceilings

Govt of A.P. , Hyderabad.
2 The Spl.Officer & Competent Authority , Urban Land ceiling
   Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of Mandamus as illegal and void and declare the order Dt: 20-9-1988 passed by the 2nd respondent in B.1/7405 to 7408/76 and confirmed by the1st respondent by his order Dt; 12-9-1995 passed in file No.UC.1/2300 to 2303/88 , as illegal and void.

Counsel for the Petitioner: MR.G.Ramakrishnaiah, Advocate

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

ORDER:

This Writ Petition is filed, questioning the orders of the second respondent-Special Officer & Competent Authority, Urban Land Ceilings, dated 20-9-1988 passed in proceedings No.B1/7405 to 7408/76 under Section 8(4) of the Urban Land (Ceiling & Regulation) Act, 1976, and, the orders of the appellate authority/first respondent-Commissioner of the Land Reforms and Urban Land Ceilings, dated 12-9-1995 passed in proceedings No. UC.1/2300 to 2303/88.

The petitioners herein, who are the father and sons, have filed declarations under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976, declaring their land including buildings, dwelling and non-dwelling structures, situated in Ibrahimbagh village. Pursuant to their declarations, draft statement was served on them, as contemplated under Section 8(3) of the Urban Land (Ceiling & Regulation) Act, 1976, stating that all the four petitioners herein hold vacant land in excess of ceiling limit, and, objections were called for. To the said draft statement, the petitioners have filed objections, and, there upon, the second respondent-Special Officer, has passed the orders dated 20-9-1988 in proceedings No. B1/7405 to 7408/76, declaring that, all the petitioners hold surplus land to the extent of 12,567.16 square meters, 6,408.63 square meters, 7,492.23 square meters, and, 7,870.86 square meters respectively. As against the same, the petitioners have filed statutory appeal, disputing the computation. But, however, the appellate authority, by order dated 12-9-1995 passed in proceedings No.UC.1/2300 to 2303/88, dismissed the appeal preferred by the petitioners.

In this Writ Petition, it is submitted by the learned Counsel appearing for the petitioners that the lands held by the petitioners are situated in Ibrahimbagh village, which is peripheral area of Hyderabad urban agglomeration; as such, in view of the orders issued by the Government in G.O.Ms.No. 733, Revenue (UC.II) Department, dated 31-10-1988, they are entitle to have the benefit of

exemption to the extent of five acres of land. It is submitted, in that view of the matter, the petitioners do not hold any vacant excess land. The learned Counsel for the petitioners has placed a copy of the order passed by the second respondent-Special Officer in Proceedings No. B1/1999/76, dated 7-11-1995, wherein benefit of G.O.Ms.No. 733, Revenue (UC.II) Department, dated 31-10-1988 is extended to the declarant therein for the lands situated in very same Ibrahimbagh village. It is further submitted by the learned Counsel for the petitioners that though the petitioners are entitle for appurtenant land and additional appurtenant land for dwelling units and non-dwelling units, which were existing prior to the notified date, but the respondents have not extended the benefit of the same, without recording any valid reason. It is further submitted by the learned Counsel for the petitioners that though an extent of land admeasuring 4,485.25 square meters is covered by roads and passages, but, even the said area was computed illegally and added to the share of declarants for the purpose of determining vacant land.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents, that G.O.Ms.No. 733, Revenue (UC.II) Department, dated 31-10-1988 is issued by the Government subsequent to the orders passed by the primary authority; as such, the petitioners are not entitle to claim the benefit of said exemption, granted by the Government. Further, it is submitted that the primary authority and the appellate authority have considered the matter with reference to the objections raised by the declarants; and in that view of the matter, there is no illegality in the orders passed by the primary authority, as confirmed by the appellate authority, so as to interfere in this Writ Petition, filed by the petitioners.

From the above submissions of the learned Counsels, in this case, it is to be seen, G.O.Ms.No. 733, Revenue (UC.II) Department dated 31-10-1988 is issued by the Government by way of policy decision, to grant exemptions, in exercise of powers under Section 20(1)(a) of the Urban Land (Ceiling & Regulation) Act, 1976, for the lands in peripheral areas of Urban agglomeration, to the extent of five acres of land, excluding the area required for roads, hospitals and for other purposes. Merely because the said G.O.Ms.No. 733,

Revenue (UC.II) Department, dated 31-10-1988 is issued subsequent to the orders passed by the primary authority, it cannot be said that the petitioners are not entitle to have the benefit of the said exemption orders. The learned Counsel also placed a copy of the order passed by the primary authority, wherein, the benefit of G.O.Ms.No. 733, Revenue (UC.II) Department, dated 31-10-1988 was extended for the lands which are situated in the very same Ibrahimbagh village. As much as the final orders are under challenge, and, the land did not vest with the State so far, the petitioners are entitle to seek benefit of the said Government Order, for exemption, if it is applicable. Further, from the impugned order, it is clear, that the petitioners have claimed benefit of appurtenant land and additional appurtenant land, but the same is also not considered with reference to the statutory provisions under the Urban Land (Ceiling & Regulation) Act, 1976 and rules made there under. The said claim is rejected merely referring to instructions of the Government, which will not have over-riding effect, over the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 and rules made there under. Even with regard to the land covered by the roads, without recording clear finding, the said area is also computed to the holding of the petitioners herein. The learned Counsel for the petitioners placed reliance on the judgment, in the case of *Nalla Yakoob Vs. Government of AP*, in support of his argument that the exemption granted by the Government in G.O.Ms.No. 733, Revenue (UC.II) Department, dated 31-10-1988, is automatic.

The petitioners herein are seeking the benefit of exemption in view of the orders issued by the Government in G.O.Ms.No. 733, Revenue (UC.II) Department, dated 31-10-1988. In the above said orders, the Government exempted the lands to an extent of five acres, which are situated in peripheral areas of Urban agglomeration. The petitioners also placed a copy of the order passed by the primary authority, extending the benefit of exemption for the lands situated in the same village, namely Ibrahimbagh. As much as the said Government Order is issued subsequent to the final orders passed by the primary authority, there was no occasion for the primary authority to examine the applicability of the said GO to the case of the petitioners. Further, the claim of the petitioners with regard to appurtenant and additional appurtenant land, and, the area covered by roads and passage, is also not examined with reference to the statutory

provisions under the Urban Land (Ceiling & Regulation) Act, 1976 and rules made there under. For the foregoing reasons, I deem it is a fit case to set aside the orders under challenge, and remit the matter back to the primary authority to consider afresh. Accordingly the orders passed by the primary authority-second respondent, in proceedings No.B1/7405 to 7408/76, dated 20-9-1988, and the orders passed by the appellate authority-first respondent in proceedings No. UC.1/2300 to 2303/88, dated 12-9-1995 are hereby set aside and the matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to issue notices afresh to the declarants and their counsels, hear the matter afresh and, pass appropriate orders by considering their objections in all respects.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 21 --04—2005.

Msnr.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner of Land Reforms & Urban Land Ceilings

Govt of A.P. , Hyderabad.

2 The Spl.Officer & Competent Authority , Urban Land ceiling
Hyderabad.

3 2 CD copies

4. 1 CC to MR.G. Ramakrishnaiah, Advocate (OPUC)

5. Two ccs to Govt. Pleader for Revenue, High court of AP,. Hyderabad (OUT).